

**STATE BOARD OF LAND COMMISSIONERS
NOTICE OF RULEMAKING - PROPOSED RULE
IDAPA 20 Title 03 Chapter 02
Docket 30-0302**

Section	Title	Description of New Rule or Amendment to Existing Rule
000	Legal Authority	Amended to expand the legal authority provided by Title 47, Chapter 15, Idaho Code, including the additional obligations placed on the Land Board by SB 1169.
001	Title and Scope	
001.01	Title	Section added in accordance with IDAPA 44.11.01, Rules of the Administrative Rules Coordinator. Explains the correct title and citation for this rule.
001.02	Purpose	Previously 001.01. Adds cyanidation facilities to current rule. Changes "exploration operations" to "exploration" in existing rule to comport with SB 1169.
001.03	Scope	Clarifies language of Rule 001.03.f and 001.03.h. Adds new subsections as follows: 001.02.c - procedures for approval of permanent closure plans 001.02.e - requirements for performance bonds 001.02.g - permanent closure requirements for cyanidation facilities NOTE: Substantive revisions negotiated pursuant to SB 1169 to address permanent closure of cyanidation facilities.
001.04	Other Laws	Adds "operation of cyanidation facilities." (Substantive revisions negotiated pursuant to SB 1169 to address permanent closure of cyanidation facilities.) Amends Subsection a - Deletes reference to DEQ's hazardous waste management regulations and moves the reference to new Subsection b. Adds new Subsection b to reference DEQ's hazardous and solid waste management law and rules. Amends Subsection c to include reference to DEQ's rules for ore processing by cyanidation.
001.05	Applicability	Amended to consolidate language by (1) deleting unnecessary replication of statutory language and/or provisions and (2) reordered rule subsections to streamline rule text and to consolidate language. Clarifies that the proposed rule is to be read on conjunction with Title 47, Chapter 15, Idaho Code, rather than depending on the rule to provide statutory language. Adds "operation of cyanidation facilities." (Substantive revisions negotiated pursuant to SB 1169 to address permanent closure of cyanidation facilities.) New Subsection h, which explains applicability of these rules to cyanidation facilities permitted on or before June 30, 2005.

**STATE BOARD OF LAND COMMISSIONERS
NOTICE OF RULEMAKING - PROPOSED RULE
IDAPA 20 Title 03 Chapter 02
Docket 30-0302**

Section	Title	Description of New Rule or Amendment to Existing Rule
002	Written Interpretations	Section added in accordance with Section 67-5201(19)(b)(iv), Idaho Code and IDAPA 44.11.01, Rules of the Administrative Rules Coordinator. Explains the availability of written interpretations of the rules of this chapter, in this case the Attorney General's Opinion prepared for IDL Director Winston Wiggins on June 28, 2005.
003	Administrative Appeals	Deletes statutory language (i.e., sections 003.01 through 06) and replaces it with a brief explanation of the circumstances for administrative action and a citation to the appropriate section of Idaho code for procedural steps.
004	Incorporation by Reference	Section added in accordance with Section 67-5201(19), Idaho Code and IDAPA 44.11.01, Rules of the Administrative Rules Coordinator.
005	Inclusive Gender	Section added in accordance with IDAPA 44.11.01, Rules of the Administrative Rules Coordinator.
006	Office Hours - Mailing Address and Street Address	Section added in accordance with IDAPA 44.11.01, Rules of the Administrative Rules Coordinator.
007	Public Records Act Compliance	Section added in accordance with IDAPA 44.11.01, Rules of the Administrative Rules Coordinator.
010	Definitions	Replaces definition for "Act" (010.01) with definition for "Chapter" (010.05), consistent with SB 1169.
		Adds definitions for "cyanidation" (010.06), "cyanidation facility" (010.07), "discharge" (010.11), "groundwater" (010.17), "land application" (010.19), "material change" as pertaining to cyanidation facilities (010.20.b), "material modification or material expansion" (010.21), "material stabilization" (010.22), "neutralization" (010.28), "permanent closure" (010.33), "permanent closure plan" (010.34), "permit" (010.35), "pilot facility" (010.36), "pollutant" (010.38), "post closure" (010.39), "process waters" (010.40), "small cyanidation processing facility" (010.45), "treatment" (010.50), "water balance" (010.51), "water management plan" (010.52), "waters of the state" (010.53), and "weak acid dissociable [WAD] cyanide" (010.54). These definitions are identical to definitions in the DEQ's Rules for Ore Processing by Cyanidation (IDAPA 58.01.13) or its temporary rules, which were adopted on June 23, 2005.
010.03	Best Management Practices	Amends definition of best management practices to comport with the definition in DEQ's temporary and proposed rules regarding cyanidation facility operation.
010	Various Definitions	Amended language (clean up) in definitions for "affected land" (010.01), "exploration drill holes" (010.12), "exploration" (010.13), "exploration roads" (010.14), "exploration trenches" (010.15), "operator" (010.29).

**STATE BOARD OF LAND COMMISSIONERS
NOTICE OF RULEMAKING - PROPOSED RULE
IDAPA 20 Title 03 Chapter 02
Docket 30-0302**

Section	Title	Description of New Rule or Amendment to Existing Rule
060	Exploration and Required Reclamation	Except as noted, changes clean up language in the current rule to clarify language, delete unnecessary text, and correct internal cross-references.
060.06.c	Exploration Reclamation (less than two acres)	Moved from Subsection 060.07.a to clarify that exploration drill holes or pits must be properly filled or otherwise left in a condition that will not pose a hazard to humans or animals. This is the same language that appears in Section 060.07 of the current rule.
060.07	Exploration Reclamation (more than two acres)	Deletes Subsections 07.a, 07.b, and 07.d to streamline text of Rule 060.07. Subsection 060.07.a moved to 060.06.c; Subsection 07.b and 07.d in current rule are redundant with rules in Section 06 (Subsection 06.b and new Subsection 06.c). This section rewritten to reference requirements in Subsection 060.06 (see first paragraph in Section 060.07) that are the same for exploration on an area of two acres or more.
069	Application Procedure and Requirements for Quarries, Decorative Stone, Building Stone, and Aggregate Materials Including Sand, Gravel, and Crushed Rock	Except as noted, changes clean up language in the current rule to clarify language, delete unnecessary text, and correct internal cross-references.
069.01	Approval Required	Moved from 069.05 to parallel order of rules in Sections 070 and 071 (application requirements for permanent closure of cyanidation facilities).
069.04.i		Moved to Subsection 069.05.g, to be included with reclamation plans.
069.05.f		Moved from Subsection 070.04.g, to be included for reclamation plans submitted under Rule 069.
070	Application Procedure and Requirements for Other Surface Mining Operations Including Hardrock and Phosphate Mining	Except as noted, changes clean up language in the current rule to clarify language, delete unnecessary text, and correct internal cross-references. The last two paragraphs in existing rule are rewritten and reorganized for internal consistency and for clarification.
070.01	Reclamation Plan Approval Required	Moved from 070.06 to parallel order of rules in Sections 069 and 071. Deleted language starting with "Any operator..." (line 5) is in the statute; deletes unnecessary text from this rule.
070.02	Application Package	Subsections a through e deleted; same text is contained in Rule 069.03. References application package

**STATE BOARD OF LAND COMMISSIONERS
NOTICE OF RULEMAKING - PROPOSED RULE
IDAPA 20 Title 03 Chapter 02
Docket 30-0302**

Section	Title	Description of New Rule or Amendment to Existing Rule
070.03	Map Requirements	Deletes requirements listed as a through h, and then cites map requirements listed under Rule 069.04. (The deleted language is redundant with the language in Rule 069.04.)
070.04	Reclamation Plan Requirements	Deletes subsections a, b, c, d, and g, which are redundant with language in Rule 069.05, then cites reclamation requirements listed under Rule 069.05.
070.04.d		Added to parallel application requirements for permanent closure of cyanidation facilities (Subsection 071.02.m).
070.05	Operating Plan Requirements	Subsection 070.05.a rewritten to consolidate list of maps required for operating plans, rearranging list to a.i through a.vi.
070.05.b		Subsections 070.05.b (new section number) rewritten to parallel the style of Subsection 070.05.a, listing additional information or analyses that may be requested by the director. Subsection ii adds language to require geotechnical analyses for pit walls, regardless of height, where geologic conditions could lead to failure of the wall; this addresses problems observed on certain mined lands.
071 (New)	Application Procedure and Requirements for Permanent Closure of Cyanidation Facilities	
071.01	Permanent closure plan approval required	Prohibits cyanidation facility operation without an approved permanent closure plan and before filing a permanent closure bond.
071.02	Permanent closure plan requirements	Specifies required contents of a complete permanent closure plan (Subsections a through l). Replicates language contained in the DEQ's temporary rules, adopted on June 23, 2005, and its proposed rules. Subsection 071.02 includes provisions unique to IDL's rules to allow an applicant to apply for phased bonding for permanent closure (subsections 071.01.b.i and b.ii; subsections 071.02.l.i, l.ii, and l.iii) by submitting a schedule for each phase of facility construction and operation and explaining how closure will be completed if there is an adjacent operating cyanidation unit.
071.03	Preapplication conference	Specifies that IDL will coordinate with DEQ for any preapplication conferences. This will help the agencies to determine the scope of IDL's review of an application and prospective costs.
071.04	Application package for permanent closure	Specifies required contents of a complete application for permanent closure. Replicates language contained in the DEQ's temporary rules, adopted on June 23, 2005.

**STATE BOARD OF LAND COMMISSIONERS
NOTICE OF RULEMAKING - PROPOSED RULE
IDAPA 20 Title 03 Chapter 02
Docket 30-0302**

Section	Title	Description of New Rule or Amendment to Existing Rule
071.05	Application fees	
071.05.a	Processing and Review Fee	Requires payment of \$5,000 plus additional costs IDL expects to incur during its substantive review of a permanent closure plan. Includes a provision for an application to appeal to the Board if the applicant believes IDL's estimated costs over and above \$5,000 are excessive. In the event of an appeal, the Board will be required to establish the application review and processing fee.
071.05.b	Permanent Closure Cost Estimate Verification Fee	Fee for IDL to retain a qualified independent party to verify the accuracy of the cost estimate to complete permanent closure.
080	Procedures for Review and Decision Upon an Application to Perform Surface Mining, Reclamation, and Ore Processing Using Cyanide	Except as noted, changes clean up language in the current rule to clarify language, delete unnecessary text, and correct internal cross-references. Title amended to add applicability to cyanidation facilities. Deletes subsections 080.11 and 13 in current rule to eliminate repetitive text.
080.01.a and 080.01.b	Return of Application	Current rule text is reformatted to add Subsection 080.01.a to apply to surface mining operations (rule language is unchanged). New Subsection 080.01.b added to apply to permanent closure plans for cyanidation facilities.
080.02	Agency Comments	Adds applicability to application packages for permanent closure of cyanidation facilities. Deletes statutory language (revisions in Subsection 080.02.b - line 3, starting with "Such review..."; and Subsection 080.03). Adds new rule 080.02.b to explain procedures and requirements for notifications to cities and counties. Adds citation to appropriate section of Idaho code.
080.03	Decision on Reclamation Plans	Amended title to apply only to reclamation plans. Order and statement of rules in this section structured in same manner as Rule 080.04 (Decision on Cyanidation Facility Permanent Closure Plans). Deletes statutory language in subsections 080.03.a and 03.b, cites the appropriate sections of Idaho code, and adds new subsections to explain procedures and requirements for decisions on reclamation plans. Context and scope of Rule 080.03 is unchanged. Subsection 080.03.a.i adds 30-day extension of time in which IDL must make a decision on a reclamation plan, as allowed by § 47-1512(c), I.C. (and as amended by SB 1169)
080.04	Decision on Cyanidation Facility Permanent Closure Plans	New rule. Specifies requirements for IDL to act on a permanent closure application, including the time period in which a decision to approve or reject an application must be rendered.

**STATE BOARD OF LAND COMMISSIONERS
NOTICE OF RULEMAKING - PROPOSED RULE
IDAPA 20 Title 03 Chapter 02
Docket 30-0302**

Section	Title	Description of New Rule or Amendment to Existing Rule
080.05	Nonpoint Source Pollution	Except as noted, changes clean up language in the current rule to clarify language, delete unnecessary text, and correct internal cross-references.
		Amended to include requirements for operators to provide surface water and groundwater monitoring data if there is a potential for nonpoint source pollution of adjacent waters of the state. Revision makes this rule applicable to both surface mining and cyanidation facility operations.
	<i>Authorities for this revision and revisions made in Section 140 (Best Management Practices)</i>	<p>1. Section 001.02 (in current rule, Section 001.01) indirectly integrates groundwater quality protection into these rules in the statement, "It is also the purpose of these rules to implement the State of Idaho's antidegradation policy as set forth in Executive Order No. 88-23 ("Order") as it pertains to exploration and surface mining operations on lands within the state." IDL is party to the Nonpoint Source Water Quality Program MOU, which was signed to implement IDL's obligations under the Order. The MOU includes groundwater in the definition regarding nonpoint source pollution includes groundwater. Appendix A-3 of the MOU discusses nonpoint source pollution related to mining, and sections VI.1 and VI.2 of this appendix state that IDL will require monitoring of surface and ground waters, as appropriate.</p> <p>2. IDAPA 58.01.11, Ground Water Quality Rule. Rule 000 - Legal Authority states, under Section 36-126, Idaho Code, "...all state agencies shall incorporate the Ground Water Quality Plan, adopted by the legislature, in the administration of programs and are granted authority to promulgate rules to protect groundwater quality as necessary to administer such programs."</p> <p>3. Amendments to Section 001.04.a (Other Laws) made during temporary rule negotiations included a specific reference to IDAPA 58.01.11, Ground Water Quality Rule.</p>
080.06	Permanent Closure Plan Approval	New section. Requires IDL to coordinate its review of a permanent closure plan with the DEQ. Requires applicant to submit a reclamation for surface mining disturbances no sooner than 120 days after an application for permanent closure has been submitted to IDL for a planned cyanidation facility.
080.07	Reasons for Denial	Adds reasons the director will deny a permanent closure plan, providing same criteria as in DEQ's rules.
080.08	Public Hearing	Deletes statutory language.
	Notification of Decision	Formerly Subsection 080.10. Deletes language already contained in Subsection 080.04 (Decision on Reclamation Plans).
080.14	Appeal of Final Order	Amended to apply to permanent closure of cyanidation facilities, as well as reclamation of affected lands. Replaces reference to Subsection 160.07 of these rules with reference to Idaho code.

**STATE BOARD OF LAND COMMISSIONERS
NOTICE OF RULEMAKING - PROPOSED RULE
IDAPA 20 Title 03 Chapter 02
Docket 30-0302**

Section	Title	Description of New Rule or Amendment to Existing Rule
090	Amending an Approved Reclamation Plan	Amended title to apply only to reclamation plans. Except as noted, changes clean up language in the current rule to clarify language and delete unnecessary text.
091 (New)	Amending an Approved Permanent Closure Plan	Defines circumstances when a permanent closure plan amendment is necessary and the processes for amending a plan. IDL or the applicant can initiate the process to amend an approved plan. Subsections 091.02.a and 091.02.b are the same as the DEQ's Rules for Ore Processing by Cyanidation (IDAPA 58.01.13.750.01), except in IDL's temporary rule these provisions are constrained to the adequacy of the permanent closure plan and how, if at all, an amendment will affect permanent closure costs and the required performance bond.
100	Deviation from an Approved Reclamation Plan	Amended title to apply only to reclamation plans. Except as noted, changes clean up language in the current rule to clarify language and delete unnecessary text.
110	Public Hearing	Amended to apply to reclamation and permanent closure plans. Except as noted, changes clarify language of current rule and delete unnecessary text.
110.01	Call for a Hearing	Added to restructure order of rule.
110.02	Consolidation	Adds provision for IDL to hold joint hearings with DEQ when a permanent closure plan has been submitted under Section 071.
111 (New)	Completion of Permanent Closure	The content and language of this entire rule is consistent with the language contained in the DEQ's Rules for Ore Processing by Cyanidation (IDAPA 58.01.13.501). Sets forth time periods following the end of cyanidation facility operation to commence permanent closure activities (Subsection 111.01) and requires submittal of a permanent closure report for review and approval upon completion of closure (Subsection 111.02).
112 (New)	Decision to Approve or Disapprove of a Permanent Closure Report	Establishes criteria for approval and disapproval of a permanent closure report. The content of a permanent closure report, criteria for approval or disapproval, and required procedures described in this rule is the same as contained in the DEQ's Rules for Ore Processing by Cyanidation (IDAPA 58.01.13.502).

**STATE BOARD OF LAND COMMISSIONERS
NOTICE OF RULEMAKING - PROPOSED RULE
IDAPA 20 Title 03 Chapter 02
Docket 30-0302**

Section	Title	Description of New Rule or Amendment to Existing Rule
120	Performance Bond Requirements for Surface Mining	Title and subsections 120.01, 120.01.c, and 120.03 are amended to apply only to surface mining operations. Deletes unnecessary language and clarifies certain language.
120.05	Form of Performance Bond	Deleted from this section; moved to new Section 122. Form of performance bond for reclamation and permanent closure expected to be the same.
120.06, 120.07, 120.08, and 120.12	Blanket Bond; Notice of Cancellation; Revocation of Surety License; Cooperative Agreements	Deleted from this section; moved to new Section 122 (Form of Bond), to apply to both reclamation and permanent closure performance bonds.
120.11	Criteria for Forfeiture	Deleted from this section; moved to new Section 123 (Forfeiture of Bond) to apply to both reclamation and permanent closure plan implementation activities.
121 (New)	Performance Bond Requirements for Cyanidation Facilities	Specifies performance bond requirements for permanent closure of cyanidation facilities and procedures for Board action, when requested. Includes provisions for periodic bond review (Subsection 121.03) to ensure that a performance bond filed for permanent closure remains adequate to cover closure costs and to determine whether the bond should be adjusted to reflect then-current closure costs. Includes provisions for bond reduction (Subsection 121.06), bonding rate (Subsection 121.07), and liabilities for unbonded costs (Subsection 121.08), each of which parallel the language contained in IDL's current rules governing bonding for reclamation of surface mining sites.
		Subsection 121.01 includes language that will allow an applicant to apply for phased bonding for permanent closure. (See also description of application requirements for phased bonding under 071.02, above).
122 (New)	Form of Performance Bond	Moved from Subsection 120.05 of existing rules to consolidate performance bond provisions for reclamation and permanent closure into one section of these rules. Includes text of subsections deleted from Section 120, as noted above (see reference to Subsection 120.06, etc.).
123 (New)	Forfeiture of Bond	Integrates criteria for bond forfeiture in the event an operator fails to perform either reclamation or permanent closure activities. (Text moved from Subsection 120.05 of the existing rules governing reclamation of surface mining sites.)
130	Transfer of Approved Plans	Minor editorial changes. Amended to include two new subsections, 130.01 and 130.02, to apply to reclamation plans and permanent closure plans, respectively. Except for this formatting change, the reclamation rule is unchanged. The general provisions pertaining to permanent closure plans are the same as contained in the DEQ's Rules for Ore Processing by Cyanidation (IDAPA 58.01.13.800). Subsections 130.02.a and 130.02.b parallel IDL's requirements for transfer of approved reclamation plans, as contained in the current rules (IDAPA 20.30.02.130).

**STATE BOARD OF LAND COMMISSIONERS
NOTICE OF RULEMAKING - PROPOSED RULE
IDAPA 20 Title 03 Chapter 02
Docket 30-0302**

Section	Title	Description of New Rule or Amendment to Existing Rule

**STATE BOARD OF LAND COMMISSIONERS
NOTICE OF RULEMAKING - PROPOSED RULE
IDAPA 20 Title 03 Chapter 02
Docket 30-0302**

Section	Title	Description of New Rule or Amendment to Existing Rule
140	Best Management Practices and Reclamation for Surface Mining Operation and Permanent Closure of Cyanidation Facilities	Amended to include applicability to permanent closure plans and to include requirements for BMPs to protect groundwater and waters of the state; current rule only requires BMPs for surface water protection. (Refer to explanation of changes made to Subsection 080.05, Nonpoint Source Pollution). Also deletes unnecessary text, clarifies language in current rule to clarify language, and corrects internal cross references.
140.01.a	Nonpoint Source Control	Deletes "sediment" to expand scope to include sediments and pollutants, as defined in Section 010.38 (pollutant - a negotiated rule), which was added for regulation of permanent closure of cyanidation facilities. Block of text pertaining to sediment controls moved to new Subsection 140.02.
140.06	Backfilling and Grading	Text deleted that is already in Subsection 060.03 and 04 (Exploration).
150	Termination of Plan	Amended to include two new subsections, 150.01 and 150.02, to apply to reclamation plans and permanent closure plans, respectively. Clarifies current rule language. Compliance with new sections 111 and 112 is required before a permanent closure plan will be terminated.
160	Enforcement and Failure to Comply	Deletes statutory language (i.e., subsections 160.05.a through 05.c; Subsection 06, and Subsection 07 in the current rule) and replaces it with a citation to the appropriate section of Idaho code for procedural steps. Amended to clarify language.
170	Computation of Time	Minor editorial changes.
180	Public and Confidential Information	Amended to include applicability to permanent closure plans. Sections 01 and 02 added to more specifically refer to the provisions of the Public Records Act. Minor editorial changes.
190	Deposit of Forfeitures and Damages	Amended to create a new section (190.02) to require deposits into a cyanidation facility closure fund, as established by HB 318 (the trailer bill to SB 1169).
200	Compliance of Existing Reclamation Plans	Amended to apply only to reclamation plans. Applicability of these rules to cyanidation facilities permitted on or before June 30, 2005, is addressed in new subsections 001.04.h and 001.04.i.